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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re TYRONE C., A Person Coming
Under the Juvenile Court Law.

B224600

(Los Angeles County
Super. Ct. No. CK79110)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

BETTY L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
David Fields, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

The juvenile court appointed Trena R., the maternal aunt of appellant Betty L. (mother), the legal guardian of mother's son, Tyrone C. Mother contends that prior to the commencement of this juvenile dependency case she had a "plan" to have Trena appointed Tyrone's legal guardian through the probate court. Mother appeals the juvenile court's jurisdictional and dispositional orders and requests that Tyrone be returned to her care and custody so that she can implement her plan without the juvenile court's intervention. For reasons we shall explain, we reject mother's arguments and affirm the orders of the juvenile court.

FACTS

On September 10, 2009, mother was arrested and incarcerated for a felony offense. The next day she tested positive for cocaine. A week later, on September 18, 2009, Tyrone was born. Mother was incarcerated at the time of Tyrone's birth and was expected to be incarcerated for the first year of his life.

Mother, who turned 24 years old a few days before Tyrone was born, had four other children five years of age or younger: Marquis L. (five years old), D.H. (two years old), and twins Jayla C and Jada C. (one year old). All of mother's children were born while mother was incarcerated. Mother had a history of drug abuse and a long criminal record as an adult and juvenile.

Trena began taking care of Marquis, D.H., Jayla and Jada soon after they were born. Trena is the legal guardian of D.H., Jayla and Jada. Trena's sister, T.B., is the legal guardian of Marquis.

Trena was also the caretaker of Darion L. and Trey R., both of whom were two years old. According to respondent Los Angeles County Department of Children and Family Services (Department), Trena was "financially secure," and was able to financially provide for the children under her care with income from disability payments and public assistance.

Mother voluntarily relinquished custody of her first four children without the commencement of juvenile dependency proceedings. Trena advised the Department that “mother has a habit of being on the streets, using drugs, getting caught and having children while in jail.” Trena also stated to the Department that mother has never had any interest in reunifying with her children and that she rarely visits them.

On September 21, 2009, the Department placed Tyrone under Trena’s care. Three days later, on September 24, 2009, the Department filed a juvenile dependency petition. In the petition the Department alleged that the juvenile court had jurisdiction over Tyrone pursuant to Welfare and Institutions Code section 300, subdivisions (b) [failure to protect] and (g) [no provision for support].¹ The factual basis for the petition with respect to mother was mother’s current use of cocaine and her history of substance abuse, including her use of cocaine while she was pregnant with Tyrone. As to Tyrone’s alleged father, Nathaniel C. (father), the Department alleged that he had a criminal history of a conviction of robbery and possession of a narcotic controlled substance, and that he failed to provide Tyrone with the necessities of life.

On May 7, 2010, the juvenile court held a jurisdictional and dispositional hearing. Mother called Trena as a witness. Trena testified, inter alia, that prior to Tyrone’s birth, she and mother planned to have Tyrone stay with Trena but because Tyrone was in the Department’s custody, Trena was not “able to go to probate court as usual.”

Mother argued through counsel that the juvenile court should not assert jurisdiction over Tyrone because she had a plan to take care of him, namely getting Trena appointed his legal guardian without the involvement of the juvenile court. The juvenile court rejected that argument and sustained the petition, as modified with certain interlineations. In so ruling, the court found, inter alia, that Tyrone had suffered from mother’s use of cocaine during her pregnancy, father had failed to provide for Tyrone’s

¹ Except as otherwise indicated, statutory references are to the Welfare and Institutions Code.

life necessities thus far, and that there was a substantial risk of serious physical harm in the future if Tyrone were placed in the custody and care of mother and father.

With respect to the disposition, neither mother nor father requested family reunification services. Tyrone, through counsel, argued that the juvenile court should appoint Trena as legal guardian pursuant to section 360, subdivision (a).² Mother's counsel stated that mother was "joining" Tyrone's request to have Trena appointed legal guardian pursuant to section 360, subdivision (a), and that it was mother's "desire" to have such a guardianship. Mother simply said: "I wish for my auntie to have guardianship." Father stated he was in favor of having Trena appointed legal guardian. The Department opposed the appointment of Trena as legal guardian on the ground that it was not in Tyrone's best interest because Trena was taking care of too many children. After considering the parties' arguments and requests, the juvenile court scheduled another dispositional hearing on May 17, 2010.

At the May 17, 2010, hearing, mother's counsel stated: "We're asking for the court to order a [section] 360(a) guardianship with the current caretaker [i.e. Trena]." The Department again opposed appointing Trena as legal guardian. The juvenile court issued an order appointing Trena as Tyrone's legal guardian and letters of guardianship doing the same.

Mother filed a timely appeal of the juvenile court's May 10 and May 17, 2010, orders.

² Section 360, subdivision (a) provides in part: "[I]f the court finds that the child is a person described by Section 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship"

DISCUSSION

As a preliminary matter, we note that there is a serious issue regarding whether mother is an aggrieved party with standing to maintain this appeal. The end result of the juvenile dependency proceedings—the appointment of Trena as Tyrone’s legal guardian—is precisely the outcome mother contends she wants to achieve, except that mother wants to reach that goal through a different department of the superior court, applying a different statute.

Assuming without deciding that mother has standing, we reject mother’s arguments. Under section 300, subdivision (b), the juvenile court can assert jurisdiction over a child if the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or abuse as a result of the parent’s conduct. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261.) Here, there was substantial evidence supporting the juvenile court’s findings that Tyrone had already suffered serious physical harm as a result of mother’s conduct, and that there was a substantial risk that he would continue to suffer such harm if he was returned to her custody and care.³ It was undisputed that mother used cocaine during Tyrone’s pregnancy, that she was a long-time drug user, that she was incarcerated when Tyrone was born, and that she expected to be incarcerated for about the first year of Tyrone’s life. The juvenile court therefore had ample grounds to assert jurisdiction over Tyrone.

Mother claims that she had a plan to voluntarily relinquish custody of Tyrone to Trena through the probate court. The probate court, however, does not have jurisdiction over the children of a living parent. Mother apparently was able to relinquish custody over her first four children pursuant to Family Code section 8700, which provides for a so-called designated relinquishment whereby a parent relinquishes her child to a licensed adoption agency and designates a person she would like to be the adoptive parent. (*In re B.C.* (2011) 192 Cal.App.4th 129, 146.)

³ We review the juvenile court’s jurisdictional findings under the substantial evidence standard of review. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.)

Mother in essence contends that the juvenile court should have relied on her unexecuted, informal plan of voluntary relinquishment as a basis to dismiss the juvenile dependency case. This would have meant returning custody of Tyrone to mother—who was incarcerated at the time—with the assumption that she would do the right thing, and agree to voluntarily relinquish custody to Trena. We find no legal error in the juvenile court’s refusal to dismiss the case and trust in mother’s plan. Indeed, in light of mother’s incarceration, admitted long-term drug use, and lack of interest in reunification, the juvenile court would have committed error by dismissing the case.

With respect to the juvenile court’s dispositional order, mother stated at the hearings on May 10 and May 17, 2010, that she consented to the appointment of Trena as Tyrone’s legal guardian pursuant to section 360, subdivision (a). Because she failed to object to the juvenile court’s dispositional order in the juvenile court, mother has forfeited any claim of error with respect to that order on appeal. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222.)

DISPOSITION

The juvenile court’s orders of May 10 and May 17, 2010, are affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.